

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

CLARENCE C. WILKS,

Plaintiff,

v.

Case No. 18-C-10

SHERIFF RICHARD R. SCHMIDT, et al.,

Defendants.

ORDER

On January 3, 2018, plaintiff Clarence C. Wilks, a prisoner in the Wisconsin State Prison System, filed a complaint against defendants Sheriff Richard R. Schmidt, Captain Dobson, Ms. Soloman, CO Mario Dantzer, Milwaukee County Jail Medical Staff, and a number of John Does, along with a motion for leave to proceed without prepayment of the filing fee. Pursuant to 28 U.S.C. § 1915, U.S. Magistrate Judge Nancy Joseph, the judge assigned to the case at that time, ordered Wilks to pay an initial partial filing fee of \$15.00 within 21 days. Wilks failed to comply with that order. On February 21, 2018, Judge Joseph ordered Wilks to pay the initial partial filing fee or explain why he cannot do so by March 21, 2018. When the fee remained unpaid, the court dismissed the case without prejudice on March 29, 2018 for failure to prosecute. Wilks now seeks, some three months after the dismissal, to reopen the case.

Wilks' request will be denied. His request to reopen is really a request for relief from a judgment or order which is governed by Rule 60 of the Federal Rules of Civil Procedure. In order to be granted such relief, Wilks must establish a basis for granting the motion, such as mistake, inadvertence, surprise, or excusable neglect. Fed. R. Civ. P. 60(b). He has not done so here.

Accordingly, he is not entitled to the relief he seeks.

This is not to say, however, that Wilks cannot file a separate lawsuit. The earlier dismissal was without prejudice, which means he is free to commence a new action and seek leave to proceed without prepayment of the filing fee. Should Wilks do so, the court will assess a new initial partial filing fee based upon his present earnings and account status.

IT IS THEREFORE ORDERED that Wilks' motion to reopen the case (ECF No. 12) is **DENIED**.

Dated this 29th day of June, 2018.

s/ William C. Griesbach
William C. Griesbach, Chief Judge
United States District Court